REMARKS

Claims 1-5 and 9 are in this application. Claims 6-8 have been previously canceled.

In the final office action, Claims 1-5 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al. (U.S 5,489,923) in view of Yamamoto we al. (U.S. 5,742,279), and further in view of Shaffer et al. (U.S. 6,050,690).

Independent claim 1 recites in part as follows:

> "wherein a logical product of a first pixel value in a current field and at least one of the following: (i) a second pixel value in one of an immediately preceding field; or (ii) a third pixel value in an immediately subsequent field is obtained, and wherein the **bright point is determined to exist only when said first pixel value and either said second pixel value or said third pixel value are on**"

In explaining the above 103 rejection, the Examiner asserted that Marshall and Yamamoto do not teach "a logical product of a first pixel value in a current field line and a second pixel value in one of an immediately preceding field and a third pixel value in an immediately subsequent field is obtained, and wherein the bright point is determined to exist only when both pixel values of adjacent field are on." To overcome such deficiency, the Examiner relied on Col. 6, lns. 16-17; Col. 6, ln. 65-Col. 7, ln. 1 and Figs. 7a & b of Shaffer.

It is respectfully submitted that the portions of Shaffer applied by the Examiner do not teach the above recited feature of independent claim 1. The two-part algorithm of Shaffer requires first setting an upper and lower threshold value—V_H and V_L— to which pixel samples are compared to determine whether sufficient contrast transition has been detected. V_H and V_L refer to values of "light intensity detected by a single pixel element in a horizontal row of [a] CCD array." Col. 5, lns. 59-60. As stated in Shaffer, the intended purpose of the algorithm is to "find a suitable transition of pixel values between V_H and V_L." Once a suitable contrast

transition is established using the method described in Shaffer in Col. 6, lns. 15-56, this transition is used to determine whether an image is in focus. As described in Shafer at Col. 7, lns. 1-10, once the transition of pixels is established, those same pixels are rescanned to determine how many of the pixels remain within the range of V_H to V_L. If the current count is greater than the preceding count this is an indication that the lens is moving out of focus. *Id.*

On the other hand, the image processing apparatus of claim 1 detects the existence of a bright point by comparing a pixel in a current field with a pixel in either a preceding field **or the subsequent field**. When both of the pixels are on, then apparatus makes a determination that a bright point exists. Such method accounts for situations where the blinking pattern of the bright point is out of sync with the period where an image is captured. It is submitted that not only are the procedures outlined completely different, but the purpose and results of the procedure are entirely different. Further, there is simply no provision in Shafer for comparison of pixels in a subsequent field.

Accordingly, independent claim 1 is believed to be distinguishable from the applied combination of Marshall, Yamamoto, and Shafer.

Furthermore, it is submitted that the combination of Marshall, Yamamoto and Shaffer is unwarranted. There is no motivation or suggestion to combine Shaffer, who is concerned with focusing an image, with Marshall, who is concerned with adjusting an optical input to a computer, and Yamamoto, who is concerned with an image input and image display means. It is respectfully submitted that the Examiner has used Applicants' claims as a guide to reconstruct the prior art by assembling individual, unrelated bits and pieces. It is improper to use the hindsight gained from Applicants' specification, and then use that hindsight to reassemble the prior art in an effort to reject Applicants' claims. The only motivation to use Shaffer in the

manner attempted by the Examiner is provided solely by Applicants themselves. The Court of Appeals for the Federal Circuit, as well as its predecessor court, has long held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. It is impermissible to use Applicants' claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention. But that is precisely what has been done in the present case. For this reason alone, the rejection of claims 1-5 and 9 should be withdrawn.

For reasons similar or somewhat similar to those regarding claim 1, independent claims 4, 5, and 9 are believed to be distinguishable from the applied combination of Marshall, Yamamoto, and Shafer.

Claims 2 and 3 depend from claim 1, and due to such dependency, are believed to be distinguishable from the applied combination of Marshall, Yamamoto, and Shafer for at least the reasons previously described.

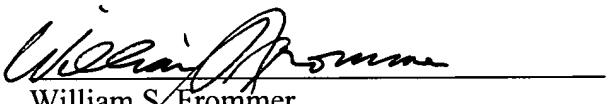
CONCLUSION

In the event the Examiner disagrees with any of statements appearing above with respect to the disclosures in the cited reference, it is respectfully requested that the Examiner specifically indicate those portions of the reference providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 
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